

EXHIBIT 5

COPY

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16 Attorneys for Plaintiff and Counter-Defendant
17 ALL NIPPON AIRWAYS COMPANY, LTD.

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA

20 ALL NIPPON AIRWAYS COMPANY,)
21 LTD,)

22 Plaintiff,

23 vs.

24 UNITED AIR LINES, INC.,

25 Defendant.

Case No. C07-03422 EDL

ALL NIPPON AIRWAYS
COMPANY, LTD.'S RESPONSE
TO UNITED AIR LINES, INC.'S
FIRST REQUEST TO PRODUCE

26 AND RELATED COUNTER-CLAIM

27 Plaintiff and Counter-Defendant, ALL NIPPON AIRWAYS COMPANY,
28 LTD. (hereinafter referred to as "ANA"), by and through its attorneys, Condon &
Forsyth LLP, hereby responds to UNITED AIR LINES, INC.'S (hereinafter
referred to as "UAL") First Request to Produce as follows:

GENERAL OBJECTIONS

ANA hereby asserts the following General Objections, which are in addition
to, and are incorporated within, each of the specific Responses set forth below:

1 1. ANA objects to each Request and each Definition, to the extent it
2 seeks discovery that is inconsistent with or enlarges the scope of permissible
3 discovery under the Federal Rules of Civil Procedure.

4 2. ANA objects to each Request to the extent it seeks discovery of
5 matters protected by the attorney-client privilege, the attorney work-product
6 doctrine, or other applicable privilege or protection. ANA objects to each and
7 every Request to the extent that it calls for the disclosure of any information or
8 document, which was prepared in anticipation of litigation or for trial, which
9 otherwise constitutes work product or attorney-client privileged information, which
10 is protected by the self-evaluative privilege, the joint defense privilege, applicable
11 state or federal regulations, or other applicable privilege, or which otherwise is
12 immune from discovery. Such privileged information will not be disclosed and
13 any inadvertent disclosure thereof will not be deemed a waiver of any privilege or
14 protection.

15 3. ANA objects to each Request to the extent it seeks the disclosure of
16 trade secrets, confidential research and development, or other confidential
17 proprietary and commercial information. Such privileged information will not be
18 disclosed and any inadvertent disclosure thereof will not be deemed a waiver of
19 any privilege or protection.

20 4. ANA objects to each Request to the extent it calls for information that
21 already is, or the production of documents that already are, in UAL's possession,
22 custody, or control, or equally available to UAL on the grounds that the Request is
23 unreasonably cumulative and duplicative. ANA further objects to collecting
24 documents from the public domain for purposes of production on the ground that
25 such documents are equally available to UAL.

26 5. ANA objects to each Request to the extent that it is overly broad,
27 unduly burdensome, unduly repetitive and intended to harass ANA.
28

6 ANA objects to each Request to the extent that it seeks information
that is not relevant to the subject matter of the action and is not reasonably
calculated to lead to the discovery of admissible evidence.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

With regard to your claim "damages for loss of use in excess of \$1.5 Million as
pled in the complaint in this litigation filed against United, produce all known
documents which relate to and/or which you may or will rely upon in support of
your intention as to the existence and the amount of such lost use damages

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

See General Objections. Without waiving these objections, ANA states that it will
produce all non-privileged documents currently in its possession, custody, or
control, if any, that have not already been produced. See Bates Nos. ANA 001295
through 001335.

REQUEST FOR PRODUCTION NO. 2:

With regard to ANA Pilot Teruo Usui, produce documents reflecting disciplinary
action(s) of any type relating to him, whether relating to the accident at issue in
this litigation or any other matter for which he was disciplined.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

See General Objections. ANA also objects on the grounds that this Request is
overly broad, not relevant to any claims or defenses, and not reasonably calculated
to lead to the discovery of admissible evidence. ANA further objects on the
grounds that any documents responsive to this request would be subject to Japan's
Act on the Protection of Personal Information and subject to a determination by the
individuals to assert the protection of the Act. ANA's crew members may waive

1 personal protection under the Act and may produce the requested documents, if
2 any exist, at their deposition.

3
4 **REQUEST FOR PRODUCTION NO. 3:**

5 With regard to ANA Pilot Bishin Yamaguchi, produce documents reflecting
6 disciplinary action(s) of any type relating to him, whether relating to the accident
7 at issue in this litigation or any other matter for which he was disciplined.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

9 See General Objections. ANA also objects on the grounds that this Request is
10 overly broad, not relevant to any claims or defenses, and not reasonably calculated
11 to lead to the discovery of admissible evidence. ANA further objects on the
12 grounds that any documents responsive to this request would be subject to Japan's
13 Act on the Protection of Personal Information and subject to a determination by the
14 individuals to assert the protection of the Act. ANA's crew members may waive
15 personal protection under the Act and may produce the requested documents, if
16 any exist, at their deposition.

17
18 **REQUEST FOR PRODUCTION NO. 4:**

19 With regard to ANA Pilot Yusuke Nishiguchi, produce documents reflecting
20 disciplinary action(s) of any type relating to him, whether relating to the accident
21 at issue in this litigation or any other matter for which he was disciplined.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

23 See General Objections. ANA also objects on the grounds that this Request is
24 overly broad, not relevant to any claims or defenses, and not reasonably calculated
25 to lead to the discovery of admissible evidence. ANA further objects on the
26 grounds that any documents responsive to this request would be subject to Japan's
27 Act on the Protection of Personal Information and subject to a determination by the
28

1 individuals to assert the protection of the Act ANA's crew members may waive
2 personal protection under the Act and may produce the requested documents, if
3 any exist, at their deposition

4
5 **REQUEST FOR PRODUCTION NO. 5:**

6 With regard to the cockpit voice recorder in the ANA aircraft on the date of the
7 incident involved in this litigation, produce an unedited copy of the CVR tape
8 reflecting all conversation between the ANA crew and United ramp control, air
9 traffic control, ground personnel and/or between the ANA pilots

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

11 See General Objections. Without waiving these objections, the CVR recording
12 will be made available for copying at the office of Condon & Forsyth LLP, 1901
13 Avenue of the Stars -- Suite 850, Los Angeles, CA 90067, subject to a
14 Confidentiality Order acceptable to ANA's flight crew.

15
16 **REQUEST FOR PRODUCTION NO. 6:**

17 With regard to Teruo Usui, Bishin Yamaguchi, and Yusuke Nishiguchi, produce
18 unredacted copies of all file materials reflecting with regard to each of these ANA
19 pilots, any accident/incidents which they were involved between 1995 to date, any
20 disciplinary actions between 1995 to date, and records pertaining to their training
21 and certification between 1995 to date. To the extent you claim work
22 product/privilege, provide a log with regard to those documents being withheld

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

24 See General Objections. ANA also objects on the grounds that this Request is
25 overly broad, unduly burdensome, not relevant to any claims or defenses, and not
26 reasonably calculated to lead to the discovery of admissible evidence. ANA
27 further objects on the grounds that any documents responsive to this request would
28

1 be subject to Japan's Act on the Protection of Personal Information and subject to a
2 determination by the individuals to assert the protection of the Act ANA's crew
3 members may waive personal protection under the Act and may produce the
4 requested documents, if any exist, at their deposition

5
6 **REQUEST FOR PRODUCTION NO. 7:**

7 With regard to the "Standard Ground Handling Agreement" including "Annex A –
8 Ground Handling Services" and "Annex B - United Service IATA Standard
9 Ground Handling Agreement" attached to the "Standard Ground Handling
10 Agreement" between ANA and United in effect on October 7, 2003, produce all
11 documents which reflect or pertain to the negotiating of the terms of this contract,
12 the intent/interpretation of ANA with regard to the term contained in that contract,
13 and the applicability or inapplicability of the agreement with regard to the events
14 of October 7, 2003 at SFO which is the subject of this litigation. To the extent you
15 claim any of these documents as work product/privileged, provide a log with
16 regard to those documents being withheld

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

18 See General Objections. Without waiving these objections, ANA states that it will
19 produce all non-privileged documents currently in its possession, custody, or
20 control, if any, that have not already been produced. See Bates Nos. ANA 001336
21 through 001346.

22
23 **REQUEST FOR PRODUCTION NO. 8:**

24 With regard to damages referenced in your complaint filed against United in this
25 litigation relating to "repair costs in the amount of \$3,106,233. 49," produce a copy
26 of all known documentation which relates to and/or upon which you may or will
27 rely in support of your calculations as to the nature and amount of the damages
28

1 sustained.

2 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

3 See General Objections. Without waiving these objections, ANA states that it will
4 produce all non-privileged documents currently in its possession, custody, or
5 control, if any, that have not already been produced. See Bates Nos. ANA 001295
6 through 001335.

7
8 **REQUEST FOR PRODUCTION NO. 9:**

9 With regard to any photographs, video and/or DVD relating to the damage to the
10 ANA and/or United aircraft, or relating to the circumstances leading up to the
11 collision which is at issue in this litigation, produce a complete, unedited color
12 copy of same.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

14 See General Objections. Without waiving these objections, ANA states that it will
15 produce all non-privileged documents currently in its possession, custody, or
16 control, if any, that have not already been produced. See Bates Nos. ANA 001071,
17 001072, 001128, 001129, 001114 through 001127, 001154 through 001206, and
18 001347 through 001354. Video and/or DVD will be made available for inspection
19 and copying at the office of Condon & Forsyth LLP, 1901 Avenue of the Stars -
20 Suite 850, Los Angeles, CA 90067.

21
22 **REQUEST FOR PRODUCTION NO. 10:**

23 With regard to any ANA policy relative to ANA pilots clearing potential conflicts
24 with other aircraft prior to or during taxi which was in effect before and/or after the
25 incident involved in this litigation, produce a copy of same. To the extent the
26 policy was modified, produce a copy of all versions of the policy.

27 //

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RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

See General Objections. Without waiving these objections, ANA is currently searching its records to locate documents responsive to this request and will produce any non-privileged documents responsive to this request that may be located.

Dated: November 13, 2007

CONDON & FORSYTH LLP

By:



MARSHALL S. TURNER (*pro hac vice*)
SCOTT D. CUNNINGHAM

Attorneys for Plaintiff
ALL NIPPON AIRWAYS COMPANY, LTD.

ALL NIPPON AIRWAYS COMPANY, LTD.
Los Angeles, California 90067-6010
Telephone: (310) 557-2030

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing ALL NIPPON AIRWAYS COMPANY, LTD.'S RESPONSE TO UNITED AIR LINES, INC.'S FIRST REQUEST TO PRODUCE was mailed this 13TH day of November, 2007, to:

Scott R. Torpey, Esq.
Jaffe, Raitt, Heuer & Weiss
2777 Franklin Road, Suite 2500
Southfield, MI 48034-8214
Phone: (248) 727-1461
Fax: (248) 351-3082

Attorneys for defendant

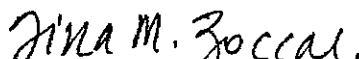
Jeffrey A. Worthe, Esq.
Worthe, Hanson & Worthe
The Xerox Centre
1851 East First Street, Ninth Floor
Santa Ana, CA 92705

Attorneys for defendant

in a properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.


HEATHER L. JACKSON

Sworn to before me this
13th day of November, 2007


Notary Public

TINA M. ZOCCALI
Notary Public, State of New York
No. 01Z06059025
Qualified in Rockland County
Commission Expires May 21, 2011

1 involving ANA's flight crew, training and certification records for the flight crew, and
2 documents regarding the SGHA.

3 5. On November 16, 2007, United served its Third Amended Notice of Taking
4 Video Depositions ("Third Notice"), adding to its previous document requests a request for
5 copies of the current ANA Flight Operations Manual, the Manual that was in effect on the date
6 of the incident, any documents that ANA or the flight crew were required to have on board the
7 aircraft, and routing documents for the flight. A true and correct copy of the Third Notice is
8 attached hereto as **Exhibit 3**.

9 6. On October 12, 2007, United served ANA with its First Request to Produce, a
10 true copy of which is attached hereto as **Exhibit 4**. As it did in the deposition notices, United
11 asked for information regarding the pilots, including disciplinary records from 1995 to date,
12 training and certification records from 1995 to date, and records related to any accident or
13 incidents they were involved in from 1995 to date. United also asked for unedited copies of the
14 recordings taken by ANA's Cockpit Voice Recorder ("CVR") at the time of the accident, ANA's
15 conflict clearing policies, and documents regarding the SGHA and the annexes thereto.

16 7. United received ANA's response to the First Request Produce on November 19,
17 2007. A true and correct copy of ANA's response is attached hereto as **Exhibit 5**. ANA
18 objected to every single request and produced minimal documents. Regarding United's requests
19 for information about the flight crew, ANA raised boiler-plate objections and an objection based
20 upon "Japan's Act on the Protection of Personal Information." Nonetheless, ANA stated that the
21 information would be produced at the depositions if the pilots agreed to waive the protections of
22 the Act. Further, ANA agreed to make the CVR recording(s) available for inspection and
23 copying. ANA did not object to production of the CVR recording(s) on the ground that federal
24 law barred such discovery, as it now does.

25 8. On November 19, 2007, ANA's attorney e-mailed me stating that he now
26 intended to produce the pilots for deposition in San Francisco rather than Los Angeles, even
27